

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BRANDON DUNCAN,)	
)	
Plaintiff,)	
)	Civil Action No. 2:15-cv-01347
v.)	
)	District Judge Nora Barry Fischer
SERGEANT BLACK, C.O. CERCONO,)	
and SUPERINTENDENT COLEMAN,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff, Brandon Duncan, commenced this case on October 16, 2015, with the filing of a motion for leave to proceed *in forma pauperis* with attached Civil Rights Complaint. ([ECF No. 1](#).) The case was referred to United States Magistrate Judge Cynthia Reed Eddy for pretrial proceedings in accordance with the Magistrate Judges Act, [28 U.S.C. § 636\(b\)\(1\)](#), and the Local Rules of Court for Magistrate Judges. In May of 2016, Defendants filed motions to dismiss. ([ECF No. 23](#), [ECF No. 27](#).) In response, Plaintiff filed an Amended Complaint on August 3, 2016. ([ECF No. 50](#).)

On August 15, 2016, Defendants Cercone and Coleman filed a motion to dismiss the Amended Complaint ([ECF No. 53](#)) and Sergeant Black filed a separate motion to dismiss. ([ECF No. 55](#).) Plaintiff responded in opposition to both motions. ([ECF No. 59](#), [ECF No. 60](#).) Defendant Black filed a Reply Brief ([ECF No. 61](#)), to which Plaintiff responded. ([ECF No. 62](#).)

On January 19, 2017 Magistrate Judge Eddy filed a Report and Recommendation ([ECF No. 66](#)) recommending that both motions be denied. The parties were served with the Report and Recommendation at their listed addresses of record and advised that any written objections

by Plaintiff were due by February 6, 2017, and any written objections by Defendants were due by February 2, 2017. To date, no party has filed any objections and no party has sought an extension of time in which to do so.

After *de novo* review of the pleadings and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 8th day of February, 2017:

1. The Motion to Dismiss Plaintiff's Amended Complaint filed by Defendants Cercone and Coleman ([ECF No. 53](#)) is **DENIED**;
2. The Motion to Dismiss Plaintiff's Amended Complaint filed by Defendant Black ([ECF No. 55](#)) is **DENIED**;
3. **IT IS FURTHER ORDERED** that the Report and Recommendation ([ECF No. 66](#)) dated January 19, 2017, is **ADOPTED** as the Opinion of the Court.
4. Defendants shall file their Answers in accordance with [Federal Rule of Civil Procedure 12\(a\)\(4\)\(A\)](#).
5. The matter is referred back to Magistrate Judge Eddy for all future pretrial matters.

/s/ Nora Barry Fischer
Nora Barry Fischer
United States District Judge

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